IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

C O M M O N - O R D E R

(1) S.B. CIVIL WRIT PETITION NO. 2800/2002
DHARMENDRA KUMAR JAIN Vs. STATE OF RAJASTHAN & ANR.

(2) S.B. CIVIL WRIT PETITION NO. 2801/2002
RAMPRAKASH GUPTA Vs. STATE OF RAJASTHAN & ANR.

(3) S.B. CIVIL WRIT PETITION NO. 2802/2002
VIJAY AGNIHOTRI Vs. STATE OF RAJASTHAN & ANR.

(4) S.B. CIVIL WRIT PETITION NO. 2803/2002
GULABRAY CHANDNANI Vs. STATE OF RAJASTHAN & ANR.

(5) S.B. CIVIL WRIT PETITION NO. 2804/2002
SMT. ARUNLATA JAIN Vs. STATE OF RAJASTHAN & ANR.

(6) S.B. CIVIL WRIT PETITION NO. 2805/2002
SMT. INDRA AGRAWAL Vs. STATE OF RAJASTHAN & ANR.

(7) S.B. CIVIL WRIT PETITION NO. 2806/2002
SMT. SUMAN CHOUDHARY Vs. STATE OF RAJASTHAN & ANR.

(8) S.B. CIVIL WRIT PETITION NO. 2807/2002
SMT. DEEPIKA NAREDI Vs. STATE OF RAJASTHAN & ANR.

(9) S.B. CIVIL WRIT PETITION NO. 2808/2002
AMIT KUMAR JAIN Vs. STATE OF RAJASTHAN & ANR.

(10) S.B. CIVIL WRIT PETITION NO. 2809/2002
AMIT CHOUDHARY Vs. STATE OF RAJASTHAN & ANR.

(11) S.B. CIVIL WRIT PETITION NO. 2810/2002
ASHOK AGRAWAL Vs. STATE OF RAJASTHAN & ANR.

(12) S.B. CIVIL WRIT PETITION NO. 2811/2002
SMT. UMA TOTLA Vs. STATE OF RAJASTHAN & ANR.

(13) S.B. CIVIL WRIT PETITION NO. 2812/2002
RAMESH CHANDRA SHARMA Vs. STATE OF RAJASTHAN & ANR.

(14) S.B. CIVIL WRIT PETITION NO. 2828/2002
AMIT AGRAWAL Vs. STATE OF RAJASTHAN & ANR.

(15) S.B. CIVIL WRIT PETITION NO. 1166/2002
DILIP AGARWAL Vs. STATE OF RAJASTHAN & ANR.

(16) S.B. CIVIL WRIT PETITION NO. 2170/2002
SATYA NARAIN SHARMA & ORS. Vs. RAJ. HOUSING BOARD

(17) S.B. CIVIL WRIT PETITION NO. 3279/2002
SMT. MANISH JAIN Vs. STATE OF RAJASTHAN & ANR.

(18) S.B. CIVIL WRIT PETITION NO. 3259/2002
SMT. ANITA AUDICHYA Vs. STATE OF RAJASTHAN & ANR.

(19) S.B. CIVIL WRIT PETITION NO. 2732/2002
MANOJ KUMAR MEENA Vs. STATE OF RAJASTHAN & ANR.

(20) S.B. CIVIL WRIT PETITION NO. 2733/2002
MAHESH KUMAR JAIN Vs. STATE OF RAJASTHAN & ANR.

(21) S.B. CIVIL WRIT PETITION NO. 2776/2002
SMT. SANTRA DEVI GUPTA Vs. STATE OF RAJASTHAN & ANR.

(22) S.B. CIVIL WRIT PETITION NO. 2795/2002
NATHU Vs. STATE OF RAJASTHAN & ANR.

(23) S.B. CIVIL WRIT PETITION NO. 3043/2002
SOM PRAKASH Vs. STATE OF RAJASTHAN & ANR.

(24) S.B. CIVIL WRIT PETITION NO. 3044/2002
SMT. NEERU MATHUR Vs. STATE OF RAJASTHAN & ANR.

(25) S.B. CIVIL WRIT PETITION NO. 3045/2002
PARASRAM MOTWANI Vs. STATE OF RAJASTHAN & ANR.

(26) S.B. CIVIL WRIT PETITION NO. 3046/2002
SMT. ANJU NAREDI Vs. STATE OF RAJASTHAN & ANR.

(27) S.B. CIVIL WRIT PETITION NO. 5867/2001
GIRIRAJ SHARMA Vs. STATE OF RAJASTHAN & ANR.

(28) S.B. CIVIL WRIT PETITION NO. 5886/2001
SMT. SANGITA AGRAWAL Vs. STATE OF RAJASTHAN & ANR.

(29) S.B. CIVIL WRIT PETITION NO. 5217/2003
KAVITA JAIN Vs. STATE OF RAJASTHAN & ANR.

(30) S.B. CIVIL WRIT PETITION NO. 2793/2002
GANGA SAHAI SHARMA & ORS. Vs. RAJ. HOUSING BOARD

(31) S.B. CIVIL MISC. APPLICATION NO. 283/2005
IN
S.B. CIVIL WRIT PETITION NO. 2849/2002
SULOCHANA TONGIA Vs. RAJ. HOUSING BOARD & ANR.

(32) S.B. CIVIL WRIT PETITION NO. 2849/2002
SULOCHANA TONGIA Vs. RAJ. HOUSING BOARD & ANR.

(33) S.B. CIVIL MISC. APPLICATION NO. 282/2005
IN
S.B. CIVIL WRIT PETITION NO. 2850/2002
SANKET TONGIA Vs. RAJ. HOUSING BOARD & ANR.

(34) S.B. CIVIL WRIT PETITION NO. 2850/2002
SANKET TONGIA Vs. RAJ. HOUSING BOARD & ANR.

(35) S.B. CIVIL MISC. APPLICATION NO. 281/2005
IN
S.B. CIVIL WRIT PETITION NO. 2838/2002
MANAK CHAND PANDYA Vs. RAJ. HOUSING BOARD & ORS.

(36) S.B. CIVIL WRIT PETITION NO. 2838/2002
MANAK CHAND PANDYA Vs. RAJ. HOUSING BOARD & ORS.

DATE OF ORDER: 25/09/2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Mahendra Goyal,)
Mr. R.A. Katta,)
Mr. Alok Sharma,)
Mr. R.D. Rastogi,) for the petitioners.
Mr. Dinesh Yadav,)
Mr. Amit Ojha and)
Mr. Imran Khan)

Mr. Bharat Vyas, AAG for the State.

Dr. P.C. Jain for the respondents.

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Since all these writ petitions are similar in nature involving similar question of law and facts, therefore, are being decided by this common judgment.

2. The facts of the case of Dharmendra Kumar Jain

is taken as leading case. In this writ petition the petitioner has challenged the impugned order dated 25.04.2002 passed by the respondents cancelling the allotment of the plot in favour of the petitioner on the ground that no opportunity of hearing was given to the petitioner before cancelling the allotment of plot in question and thus, the respondents have violated the bare minimum principles of natural justice.

3. It is further challenged on the ground that the land belonging to Khatedars Hanuman, Ramnarayan, Ramswaroop and Ramkishan was acquired by the State Government for the residential scheme of the Rajasthan Housing Board namely 'Pratap Nagar Scheme' and as per the Government decision, 15% of the developed land out of the same scheme was decided to be allotted to the khatedars in lieu of acquisition and the petitioner purchased the plot in question and allotment letter was also issued in favour of the petitioner.

4. It is also averred by the learned counsel appearing for the petitioner that the respondents are estopped by the principles of promissory estoppal from cancelling the allotment once made lawfully in favour of the petitioner and the “audi alterm partem” the

cardinal principle of natural justice has been given a complete go by by the respondents in cancelling the allotment made in favour of the petitioner. Neither any show cause notice has been issued nor any opportunity of being heard was provided to the petitioner before passing the order of cancellation of allotment of plot in question.

5. In support of his submissions, the learned counsel for the petitioner has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Suresh Chandra Nanhorya Vs. Rajendra Rajak & Ors., 2007(1) WLC (SC) Civil 578,** wherein the Hon'ble Supreme Court has held that natural justice is an inseparable ingredient of fairness and reasonableness . It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. In the celebrated case of Cooper Vs. Wandsworth Board of Works, 1963 (143) ER 414, the principle was thus stated: Even God did not pass a sentence upon Adam, before he was called upon to make his defence. 'Adam', says God, 'where art thou' has thou not eaten of the tree whereof I commanded thee that 'thou should not eat.” Since then the principle

has been chiselled, honed and refined, enriching its content. In Mullooh V. Aberdeen, 1971 (2) All E.R. 1278, it was stated: “the right of a man to be heard in his defence is the most elementary protection.” Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. On that score alone, the appeal deserves to be allowed. The order passed by the learned Single Judge in the Civil Revision and the Review Application are accordingly set aside and the matter is remitted to the High Court for fresh consideration on merits after due notice to the appellant. The appeal is allowed.

6. On the other hand learned counsel Dr. Jain, appearing for the respondent Rajasthan Housing Board has submitted that the allotment of plots to the petitioners was not in accordance with the provisions of law and the circulars that have been taken shelter of by the petitioners were in respect of the allotment of plots by virtue of various circulars i.e. Circulars dated 01.01.90, 22.04.1992, 19.03.2002, 18.03.2002, 21.09.99 and the Circular of 1997 etc. have not been followed. It is further submitted that the said

Circulars are not applicable on account of the fact that the land already stood acquired and the award for the same has been already passed vide order dated 05.05.1994 and the possession of the lands has been taken in entirety. Further, the award dated 05.05.94 was totally approved by the State Government and the compensation was paid to the Land Acquisition Officer by the Rajasthan Housing Board and since then the acquisition proceedings have become final with the completion of process and the schemes were developed and while allotting the plot in questions, illegalities and irregularities were committed and after investigation in the matter, decision at the level of the State Government was taken and, therefore, the cancellation order was passed in view of the decision taken by the State Government. In such circumstances, it cannot be said that there is violation of principles of natural justice.

7. It is also contended on behalf of the Rajasthan Housing Board that the decisions of the State Government are binding upon the Rajasthan Housing Board and in support of his submissions, Dr. Jain referred the judgment rendered by the Hon'ble Supreme Court in the case of **Rajasthan Housing Board & Ors. Vs. G.S.**

Investments & Ors., 2007(1) SCC 477, wherein the Hon'ble Supreme Court has held that by virtue of the provisions of Section 60 of the Rajasthan Housing Board Act, 1970, the State Government may give such directions as in its opinion are necessary or expedient for carrying out the purpose of this Act and it shall be the duty of the Board to comply with such directions.

8. Dr. Jain also referred the judgment rendered in the case of **Alpha Engineers Vs. State of Rajasthan & Ors., 2004(1) WLC (Raj.) 223.**

9. On behalf of the State, learned Additional Advocate General Mr. Vyas submits that on 02.08.90, the State of Rajasthan issued a Notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act of 1894') seeking to acquire 2172 Bighas of land on both sides of the Tonk Road, Jaipur for development of Housing Schemes by the Rajasthan Housing Board. On 26.03.92, the declaration under Section 6 was published and on 05.05.94 the Land Acquisition Collector made an award in favour of the Khatedars and the possession was taken by the Land Acquisition Officer and handed over to the Board and thus, the acquisition proceedings

stood concluded.

10. It is further submitted that on 19.11.2001, the State Government directed the Rajasthan Housing Board to submit report with regard to the allegations leveled in the daily news papers Rajasthan Patrika and Rashtradoot of the same date about large scale land scam and on 20.11.2001, the Rajasthan Housing Board responded to the Government communication dated 19.11.2001 and submitted factual report.

11. As per the report, on 27.01.2001 the Land Negotiation Committee took a decision to allot 15% developed land to Shri Hanuman and Ram Narayan on main Tonk Road, Jaipur which was commercial in nature in the master plan.

12. The recommendations of the Land Negotiation Committee were placed before the Land Acquisition Officer on 23.03.2001, who passed a consent award under Section 11(2) of the Act of 1894 and awarded 15% developed land, but this proposal was not sent to the Government for approval as per the mandate of Section 11 of the Act. Nor the Land Acquisition Officer is vested with any power to pass consent award under

Section 11(2) of the Act of 1894 after passing Award under Section 11(1) of the Act of 1894 and thus, the subsequent award on the basis of which commercial land was allotted, is a nullity, nor providing any kind of right in favour of any person or corresponding liability.

13. It is also submitted that on 11.12.2001, the State Government directed the Housing Board to cancel the so called allotments, which were made in total abuse of power and report compliance to the State and the Rajasthan Housing Board in response to the Government's direction, cancelled the allotments vide order impugned dated 25.04.2002.

14. In all the writ petitions, the action of the State Government and the Rajasthan Housing Board has been challenged on the ground that while cancelling the allotments of the plots, they have violated the principles of natural justice as no notice whatsoever has been issued prior to cancelling the allotments and the State Government has no authority under Section 60 of the Rajasthan Housing Board Act to issue such kind of directions.

15. In support of his submissions, learned AAG Mr. Vyas placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Rajasthan Housing Board Vs. M/s G.S. Investment, 2007 (1) SCC 477,** more particularly para Nos. 6, 7, 8 and 9, which are reproduced as under:-

> "6. We have given our careful consideration to the submissions made by the learned counsel for the parties. As mentioned earlier, after getting report of the bungling done in the auction, the State Government had passed an order on 22.02.2002 disciplinary proceedings had been initiated against the officers concerned and they were placed under suspension and a further direction was issued that in future no auction shall be held through any agency including Satish Auction House, which had conducted the auction in question. A specific order was passed on 23.04.2002 disapproving the auction held on 20.02.2002 and it was mentioned in the order that the same was being done in exercise of powers conferred by Section 60 of the Rajasthan Housing Board Act. Section 60 of the said Act reads as under:-
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> "60. Government's power to give direction to the Board/ The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Board to comply with such directions."
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> 7. The language of the provision is very clear and it empowers the State Government to give

directions to the Housing Board as in its opinion are necessary to expedient for carrying out the purposes of the Act. The Section further enjoins that it shall be the duty of the Board to comply with such directions. The section is couched in very wide language and the Housing Board has to comply with the directions issued by the State Government. Therefore, the State Government was fully empowered to issue the directions whereby it disapproved the auction held on 20.02.2002 and no exception can be taken to such a course of action. The directions have been issued in the interest of the Housing Board to generate revenue and to augment its finances, it cannot be faulted with on any ground.

8. The auction notice dated 03.02.2002 contained a condition to the effect that the Chairman of the Housing Board shall have the final authority regarding acceptance of the bid. The second auction notice issued on 19.02.2002 mentioned in the earlier auction notice. In view of this condition in auction notice it is obvious that a person who had made the highest bid in the auction did not acquire any right to have the auction concluded in his favour until the chairman of the Housing Board had passed an order to that effect. Of course the Chairman of the Housing Board could not exercise his power in an arbitrary manner but so long as an order regarding final acceptance of the bid had not been passed by the Chairman, the highest bidder acquired no vested right to have the auction concluded in his favour and the auction proceedings could always be cancelled. What are the rights of an auction bidder has been considered in several decisions of this Court.

However, we will refer to only one such decision viz. Laxmikant Vs. Satyawan which is almost identical on facts as it related to auction of a plot by the Nagpur Improvement Trust. The auction notice in this case contained a condition that the acceptance of the highest bid shall depend upon the Board of Trustees and further the person making the highest bid shall have no right to take back his bid and the decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be finding on the said person. After taking note of the aforesaid conditions it was held:

"From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public action had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in Trilochan Mishra V. State of Orissa, State of Orissa V. Harinarayan Jaiswal, Union of India V. bhim Sen Walaiti Ram and State of U.P. V. Vijay Bahadur Singh. It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different

> conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held."
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> 9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court.

16. Learned AAG also referred Section 11 of the Land Acquisition Act, which reads as under:-

> **11. Enquiry and award by Collector**.- (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under Section 8, and into the value of land and [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of-
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> (i) the true area of the land;

> (ii) the compensation which in his opinion should be allowed for the land; and
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> (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:
>
> [Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government may specify in this behalf]
>
> (2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.”

17. After referring Section 11 of the Land Acquisition Act, Mr. Vyas further submits that after approval of the acquisition proceedings by the State Government, second award even by consent cannot be passed by the Land Acquisition Officer and thus since the award dated 23.03.2001 is a nullity, it cannot create any right in favour of any person and as such no right stood created in favour of the petitioners on the

basis of the irregularities committed by the Board.

18. As per the settled law, when no right stands created, there is no question of taking it away, hence, opportunity of hearing in appropriate cases is not necessary. In this regard, learned AAG placed reliance on the judgment rendered in the case of **Jagdish Kumar Sinha Vs. State of Rajasthan, 1980 WLN 1,** more particularly para Nos. 6 to 13 and 21 to 23, which read as under:-

> "6. I have heard Mr. A.K. Mathur, learned counsel for the petitioners and Mr. D.S. Shishodia, learned Government Advocate on behalf of respondents.
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> 7. Learned counsel for the petitioners has raised the following contentions before me:
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> (1) That the orders, by which, the orders exonerating the petitioners of all the charges were recalled, were passed in utter violation of the principles of natural justice in as much as before passing them no opportunity of hearing was afforded to the petitioners.
>
> (2) That the petitioners were exonerated of all the charges by the then Chief Justice and exoneration implies termination and as such enquiry against them could not be re-initiated.
>
> (3) That the orders in question amount to reviewing the

previous orders exonerating the petitioners and as there is no specific provision for review of the exoneration orders, the orders, in question are without jurisdiction.

(4) Alternatively, review could only be made under r.32 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 and as the conditions laid down therein are not satisfied and as the orders were passed after the expiry of the period for reviewing the same, they are illegal.

8. Learned counsel for the petitioners, I the first instance, submitted that there was violation of the principles of natural justice in as much as no opportunity of hearing was given to the petitioners, before passing the impugned orders, and placed reliance on the decision of State of Orissa Vs. Binapani Dei and others (1), A.K. Kraipak Vs. UOI (2), Smt. Maneka Gandhi Vs. Union of India (3), Poonam Chand Vs. District Judge, Jodhpur & Ors. (D.B. Civil Writ Petition No. 369 of 1978, decided on May 10, 1979), Bachansingh Vs. Collector Sri Ganganagar (S.B. Civil Writ Petition No. 591 of 1977, decided on July 12, 1979) and the State of Rajasthan Vs. Shri Krishna Annakhetra Trust (D.B. Civil Special Appeal No. 81 of 1979, decided on May 8, 1979).

9. On the basis of the aforesaid authorities, it was argued that the impugned orders recalling the orders exonerating the petitioners, having been passed without affording an opportunity of hearing to them, are illegal. It is not in dispute that the petitioners were not afforded an opportunity of

being heard before passing of the impugned orders.

10. Relying on Suresh Koshy George Vs. University of Kerala (4), it was observed in A.K. Kraipak's case (2) as under:

“What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. When ever a complaint is made before a court that some principle of natural justice had been contravened,the court has to decided whether the observance of that rule was necessary for a just decision on the facts of that case.”

11. In Maneka Gandhi's case (3), it was observed as follows:

“What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full fledged hearing or it may be a hearing which is very brief and minimal: it may be a hearing prior to the decision or it may even be post decisional remedial hearing. The audi-aulteram partem rule is sufficiently flexible to permit modifications and variation to suit the exigencies of myriad kinds of situations which may arise.”

12. Learned Government Advocate submitted that the orders of exoneration passed by the then Chief Justice were without jurisdiction and they being nullity

in law did not confer any right on the petitioners and, therefore, the question of violation of the principles of natural justice does not arise. In this connection, reliance was placed on the decision of Puranchand Vs. State of Rajasthan (5), wherein Kansingh J. has made the following observations:

"Apart from this when no legal right came to be created in favour of the petitioner, the principles of natural justice will not be attracted."

In this connection, he also submitted that the orders of exoneration were passed by the then Chief Justice in violation of the principles of natural justice in as much as the departmental nominees were not heard and, therefore, they can be ignored.

13. In view of the rival contentions raised by the learned counsel for the parties, the question that, therefore, arises for consideration is: Whether the orders of exoneration passed by the then Chief Justice were without jurisdiction and, therefore, the orders recalling them could be passed without affording an opportunity of hearing to the petitioners.

21. In Macfoy Vs. United Africa Co. Ltd. (6), at page 160, it was held that the word 'void' means that the transaction is absolutely void-a nullity incapable of any legal consequence transaction not only bad but incurably bad so much so that all the world can ignore it and that nothing can be founded on it. This decision was referred to in Heffmann-La-RocheVs. Trade Secy (7).

> 22. In Kiransingh Vs. Chaman Pawan (8), it was observed as under:
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> " It is a fundamental principle that in a decree passed by the Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relief upon, even at the stage of execution 7 even in collateral proceeding. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defeat cannot be cured even by consent of parties.
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> 23. From the aforesaid decision, it is abundantly clear that the orders of exoneration being without jurisdiction could easily be ignored and have "no legal leg to stands on."

19. Mr. Vyas further urged that the extraordinary remedy under Article 226 of the Constitution of India cannot be invoked to seek restoration of illegal orders passed in sheer abuse of the powers and in this regard, he placed reliance on the judgment rendered in the case of **Jagdish Kumar (supra)**, more particularly para Nos. 25 to 30, which are reproduced hereunder:-

> "25. As the orders of exoneration on have been recalled, the disciplinary proceedings against the petitioners would be resumed and continued by the judges nominated for

conducting the disciplinary enquiries against them. Further no punitive action is taken against them. Thus there cannot be said to be any present grievance of punitive action, to be ventilated in court.

26. There is another aspect of the matter. It has already been held above that the orders of exoneration passed by the then Chief Justice were without jurisdiction, as he was not competent to pass them, after initiation of the disciplinary proceedings and nomination of the disciplinary authorities. Even the effect of setting aside the impugned orders against the petitioners would be to restore the orders which were passed without jurisdiction.

27. In A.M. Allison Vs. B.L. Sen (10), it was observed as under:

"The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in the appeals which are directed against the orders of the High Court in applications under Art. 226, we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not so satisfied. We are of the opinion that having regard to the merits which have been concurrently found in favour of the respondents both by the Deputy Commissioner, Sibasagar, and the High Court, we should decline to interfere.

28. In Venkatesuara Rao Vs. Govt. of Andhra Pradesh (11), it was observed as under:-

"In these circumstances, was it a case for the High Court to interfere in its discretion and quash the order of eh Government dated April

18, 1963? If the High Court had quashed the said order, it would have restored an illegal order- it would have given the Health Centre to a village contrary to the valid resolution passed by the Panchayat Samiti. The High Court, therefore, in our view rightly refused to exercise its extra-ordinary discretionary power in the circumstances of the case."

29. Relying on the decisions of A.M. Allison's case (supra) and Venkateshwara Rao's case (11), a learned Single Judge of this Court in Gani Mohammad Vs. The State Transport Appellate Tribunal and others (12) held as under:

"The result of setting aside the appellate order of the Tribunal would lead to the restoration of the order of the RTA which is patently erroneous. I, therefore, think it proper in the circumstances of the present case to decline to exercise the discretionary jurisdiction of this court under Article 226 of the Constitution in the matter of grant of non-temporary stage carriage permit to the petitioner on the route."

30. From the aforesaid observations, it is clear that the Court, in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India will not interfere even with the illegal orders if they would result in restoration of the orders which are illegal or without jurisdiction. In this view of the matter also, the petitioners cannot get any relief, for, granting them any relief would amount to the restoration of the orders of exoneration, which were passed by the then Chief justice, who had no jurisdiction to pass them. In these circumstances, I am firmly of

> the opinion that the impugned orders are not bad for the reason that the petitioners were not heard before passing them, particularly when the petitioners have an opportunity to defend themselves in the Disciplinary Enquiries."

20. It is also contended by the learned AAG that the action taken by the Board is contrary to the circulars issued by the Government as such circulars are relevant and applicable where the acquisition proceedings are pending, whereas in the instant case the acquisition stood concluded on 05.05.94 and thus, the action of the Board in allotting plots in favour of the petitioners pursuant to the circulars is sheer abuse of power and the same has rightly been corrected by the State Government.

21. I have heard rival submissions of the respective parties and carefully gone through the impugned orders as also the relevant provisions of law as well as the judgments referred before me by the respective parties.

22. So far as acquisition is concerned, it is not disputed that the acquisition is already made and possession was taken by the Land Acquisition Officer

from the Khatedars and compensation amount has also been awarded and after awarding compensation amount, the Rajasthan Housing Board deposited the same with the Land Acquisition Officer and the possession was handed over to the Rajasthan Housing Board for construction of their housing schemes.

23. It is also not disputed that the award which has been passed by the Land Acquisition Officer dated 05.05.94 was approved by the State Government and thus, the acquisition proceedings stood concluded.

24. On 27.01.2001, admittedly, after acquisition proceeding stand concluded, the Land Negotiation Committee took a decision to allot 15% of the developed land to Shri Hanuman and Shri Ram Narayan on main Tonk Road, Jaipur which is no doubt commercial in nature in the master plan and the recommendations were placed before the Land Acquisition Officer on 23.03.2001 by the Housing Board and on such recommendations, the Land Acquisition Officer passed a consent award under Section 11(2) of the Act of 1894 and awarded 15% developed land.

25. After allotment of such plots, possession was

handed over to the petitioners, but the petitioners are not able to show with regard to any approval granted by the State Government, which is mandatory as per the provisions of Section 11 of the Act of 1894 and thus, the second award is not approved by the State Government and as per the provisions of Section 11(1) of the Act of 1894, after passing an award, the Land Acquisition Officer has no power to pass consent award under Section 11(2) of the Act of 1894.

26. I have also gone through the judgment referred by the learned counsels appearing for the petitioners rendered by the Hon'ble Supreme Court in the case of **Suresh Chandra Nanhorya Vs. Rajendra Rajak & Ors. (supra),** wherein the Hon'ble Supreme Court has held that the natural justice is an inseparable ingredient of fairness and reasonableness. The petitioners want to take the advantage of the this judgment as the Housing Board prior to cancelling the allotment of plots, has not issued any show cause notice.

27. Further I gone through the judgment rendered by this Court in the case of **Jagdish Kumar Sinha Vs. State of Rajasthan (supra),** referred by the learned AAG Mr. Vyas, wherein in para No. 22, it has been observed

by this Court that it is a fundamental principle that in a decree passed by the Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relief upon, even at the stage of execution even in collateral proceeding. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

28. Here in the instant writ petitions, as observed herein above, after acquisition award passed by the Land Acquisition Officer on 05.05.94 and after approval of the same by the State Government, second award cannot be passed even by consent. Thus, in such circumstances, neither there is violation of principles of natural justice nor there is any lack of legislative competence.

29. I am not convinced with the submissions made on behalf of the petitioners and the Housing Board that the circulars issued by the State Government and the directions issued by the State Government, the Housing

Board is not bound by the directions issued by the State of Rajasthan, whereas the State of Rajasthan has power to issue such directions under Section 60 of the Rajasthan Housing Board Act, which has been affirmed by the Hon'ble Supreme Court in the case of **Rajasthan Housing Board & Ors. Vs. G.S. Investments & Ors. (supra),** as referred herein above.

30. In view of the aforesaid observations, I find no illegality in the impugned orders dated 25.04.2002, 11.12.2001, 14.12.2001, 22.03.2002, 02.08.2003 passed by the respondents and rightly cancelled the allotment orders issued in favour of the petitioners as the allotments itself are bad in the eye of law.

31. Consequently, all the writ petitions fail being devoid of merit and the same are hereby dismissed.

32. The interim orders granted by this Court dated 23.05.2002 in S.B.C.W. Petition No. 2800/2002, dated 23.05.2002 in S.B.C.W. Petition No. 2801/2002, dated 23.05.2002 in S.B.C.W. Petition No. 2802/2002, dated 08.05.2002 in S.B.C.W. Petition No. 2803/2002, dated 23.05.2002 in S.B.C.W. Petition No. 2804/2002,

dated 23.05.2002 in S.B.C.W. Petition No. 2805/2002,

dated 02.05.2002 in S.B.C.W. Petition No. 2806/2002,

dated 23.05.2002 in S.B.C.W. Petition No. 2807/2002,

dated 23.05.2002 in S.B.C.W. Petition No. 2808/2002,

dated 23.05.2002 in S.B.C.W. Petition No. 2809/2002,

dated 23.05.2002 in S.B.C.W. Petition No. 2810/2002,

dated 02.05.2002 in S.B.C.W. Petition No. 2811/2002,

dated 02.05.2002 in S.B.C.W. Petition No. 2812/2002,

dated 08.05.2002 in S.B.C.W. Petition No. 2828/2002,

dated 12.02..2002 in S.B.C.W. Petition No. 1166/2002,

dated 04.04.2002 in S.B.C.W. Petition No. 2170/2002,

dated 24.05.2002 in S.B.C.W. Petition No. 3279/2002,

dated 27.05.2002 in S.B.C.W. Petition No. 3259/2002,

dated 30.04.2002 in S.B.C.W. Petition No. 2732/2002,

dated 30.04.2002 in S.B.C.W. Petition No. 2733/2002,

dated 03.05.2002 in S.B.C.W. Petition No. 2776/2002,

dated 08.05.2002 in S.B.C.W. Petition No. 2795/2002,

dated 15.05.2002 in S.B.C.W. Petition No. 3043/2002,

dated 15.05.2002 in S.B.C.W. Petition No. 3044/2002,

dated 15.05.2002 in S.B.C.W. Petition No. 3045/2002,

dated 15.05.2002 in S.B.C.W. Petition No. 3046/2002,

dated 21.12.2001 in S.B.C.W. Petition No. 5867/2001,

dated 21.12.2001 in S.B.C.W. Petition No. 5886/2001,

dated 10.11.2003 in S.B.C.W. Petition No. 5217/2003,

dated 02.05.2002 in S.B.C.W. Petition No. 2793/2002,

dated 07.05.2002 in S.B.C.W. Petition No. 2849/2002, dated 07.05.2002 in S.B.C.W. Petition No. 2850/2002 and dated 07.05.2002 in S.B.C.W. Petition No. 2838/2002 stand rejected. The stay applications also stand dismissed.

33. As all the writ petitions stand dismissed, the Misc. Application Nos. 283/2005, 282/2005 and 281/2005 also stand rejected having no merit.

(K.S. RATHORE),J.

/KKC/